

HOUSE BILL NO. 1519

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Adams, D.M.)

A BILL to amend and reenact §§ 55.1-1803, 55.1-1804, 55.1-1943, 55.1-2136, and 55.1-2209 of the Code of Virginia, relating to common interest communities; professionally managed associations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1803, 55.1-1804, 55.1-1943, 55.1-2136, and 55.1-2209 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1803. Limitation on certain contracts and leases by declarant.

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions of such contract or lease. Management contracts entered into prior to the expiration of the period of declarant control contemplated by the declaration shall abide by the notice requirements set forth in § 55.1-1804.

27 C. If entered into at any time prior to the expiration of the period of declarant control contemplated
28 by the declaration, any contract, lease, or agreement, other than those subject to the provisions of
29 subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot
30 owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the
31 association at the time entered into under the circumstances.

32 D. This section shall be strictly construed to protect the rights of the lot owners.

33 **§ 55.1-1804. Documents to be provided by declarant upon transfer of control.**

34 Unless previously provided to the board of directors of the association, once the majority of the
35 members of the board of directors other than the declarant are owners of improved lots in the association
36 and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to
37 the board of directors or its designated agent the following: (i) all association books and records held by
38 or controlled by the declarant, including minute books and rules and regulations and all amendments to
39 such rules and regulations that may have been promulgated; (ii) a statement of receipts and expenditures
40 from the date of the recording of the association documents to the end of the regular accounting period
41 immediately succeeding the first election of the board of directors by the lot owners, not to exceed 60 days
42 after the date of the election, such statement being prepared in an accurate and complete manner, utilizing
43 the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of
44 lots that may be subject to the declaration upon completion of development; (v) a copy of the latest
45 available approved plans and specifications for all improvements in the project or as-built plans if
46 available; (vi) all association insurance policies that are currently in force; (vii) written unexpired
47 warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common
48 area improvements, including stormwater facilities; (viii) any contracts in which the association is a
49 contracting party; (ix) a list of manufacturers of paints, roofing materials, and other similar materials if
50 specified for use on the association property; (x) the number of members of the board of directors and
51 number of such directors appointed by the declarant together with names and contact information of
52 members of the board of directors; and (xi) an inventory and description of stormwater facilities located
53 on the common area or which otherwise serve the development and for which the association has, or

54 subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements
55 for maintenance thereof.

56 The requirement for delivery of stormwater facility information required by clause (xi) shall be
57 deemed satisfied by delivery to the association of a final site plan or final construction drawings showing
58 stormwater facilities as approved by a local government jurisdiction and applicable recorded easements
59 or agreements, if any, containing requirements for the maintenance, repair, or replacement of the
60 stormwater facilities.

61 If the association is managed by a common interest community manager in which the declarant,
62 or its principals, has no pecuniary interest or management role, then such common interest community
63 manager shall have the responsibility to provide the documents and information required by clauses (i),
64 (ii), (vi), and (viii). If the association is managed by a common interest community manager subject to a
65 contract that renews automatically, such manager shall provide the association with notice of such renewal
66 at least 30 days but not more than 90 days prior to the date by which the association is required to notify
67 such manager of the association's intent to terminate such contract. Such notice shall be made prior to
68 every renewal period.

69 **§ 55.1-1943. Control of condominium by declarant.**

70 A. The condominium instruments may authorize the declarant, or a managing agent or some other
71 person selected or to be selected by the declarant, to appoint and remove some or all of the officers of the
72 unit owners' association or its executive board, or to exercise powers and responsibilities otherwise
73 assigned by the condominium instruments and by this chapter to the unit owners' association, the officers,
74 or the executive board. The declarant, managing agent, or other person selected by the declarant to so
75 appoint and remove officers or the executive board or to exercise such powers and responsibilities
76 otherwise assigned to the unit owners' association, the officers, or the executive board shall be subject to
77 liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control
78 as specified in the condominium instruments or, if not so specified, within such period as defined in this
79 section. But no amendment to the condominium instruments shall increase the scope of such authorization
80 if there is any unit owner other than the declarant, and no such authorization shall be valid after the time

81 limit set by the condominium instruments or after units to which three-fourths of the undivided interests
82 in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the
83 preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total
84 undivided interests assigned or to be assigned to all units registered with the Common Interest Community
85 Board pursuant to subsection B of § 55.1-1978 and described pursuant to subdivision A 4, B 2, or C 8 of
86 § 55.1-1916.

87 B. The time limit initially set by the condominium instruments shall not exceed five years in the
88 case of an expandable condominium; three years in the case of a condominium other than an expandable
89 condominium, containing any convertible land; or two years in the case of any other condominium. Such
90 time period shall begin upon settlement of the first unit to be sold in any portion of the condominium.

91 Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended
92 for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the
93 condominium or after units to which three-fourths of the undivided interests in the common elements
94 appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to
95 the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such
96 time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and
97 (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer
98 than three persons unaffiliated with the declarant.

99 Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special
100 meeting made in accordance with § 55.1-1949 a written statement in a form provided by the Common
101 Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a
102 managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of
103 the officers of the unit owners' association or its executive board and (b) exercise powers and
104 responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such
105 statement shall contain both a notice of the effect of the extension of declarant control on the enforcement
106 of the warranty against structural defects provided by the declarant in accordance with § 55.1-1955 and a

107 statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary
108 to protect his interest.

109 C. If entered into any time prior to the expiration of the period of declarant control, no contract or
110 lease entered into with the declarant or any entity controlled by the declarant, management contract,
111 employment contract, or lease of recreational or parking areas or facilities, which is directly or indirectly
112 made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group,
113 shall be entered into for a period in excess of two years. Any such contract or agreement entered into on
114 or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive
115 board upon not less than 90 days' written notice to the other party given not later than 60 days after the
116 expiration of the period of declarant control. Any such contract or agreement may be renewed for periods
117 not in excess of two years; however, at the end of any two-year period the unit owners' association or its
118 executive board may terminate any further renewals or extensions of such contract or agreement. If the
119 unit owners' association is managed by a common interest community manager subject to a contract that
120 renews automatically, such manager shall provide the association with notice of such at least 30 days but
121 not more than 90 days prior to the date by which the association is required to notify such manager of the
122 association's intent to terminate such contract. Such notice shall be made prior to every renewal period.

123 The provisions of this subsection shall not apply to any lease referred to in § 55.1-1910 or subject to
124 subsection E of § 55.1-1916.

125 D. If entered into at any time prior to the expiration of the period of declarant control, any contract,
126 lease, or agreement, other than those subject to the provisions of subsection C, may be entered into by or
127 on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such
128 contract, lease, or agreement is bona fide and is commercially reasonable to the unit owners' association
129 at the time entered into under the circumstances.

130 E. This section does not apply to any contract, incidental to the disposition of a condominium unit,
131 to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year,
132 nursing services, medical services, other health-related services, board and lodging and care as necessary,
133 or any combination of such services. The rule of property law known as the rule restricting unreasonable

134 restraints on alienation shall not be applied to defeat any provision of the condominium instruments
135 requiring that the unit owners be parties to such contracts.

136 F. If the unit owners' association is not in existence or does not have officers at the time of the
137 creation of the condominium, the declarant shall, until there is such an association with such officers, have
138 the power and the responsibility to act in all instances where this chapter requires action by the unit owners'
139 association, its executive board, or any officer.

140 G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify
141 the governing body of the locality in which the condominium is located of the forthcoming termination of
142 declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency
143 designated by the local governing body shall advise the principal elected officer of the condominium unit
144 owners' association of any outstanding violations of applicable building codes or local ordinances or other
145 deficiencies of record.

146 H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver
147 to the president of the unit owners' association or his designated agent (i) all unit owners' association books
148 and records held by or controlled by the declarant, including minute books and all rules, regulations, and
149 amendments to such rules and regulations that may have been promulgated; (ii) an accurate and complete
150 statement of receipts and expenditures prepared using the accrual method of accounting from the date of
151 the recording of the condominium instruments to the end of the regular accounting period immediately
152 succeeding the first annual meeting of the unit owners, not to exceed 60 days from the date of the election;
153 (iii) a copy of the latest available approved plans and specifications for all improvements in the project or
154 as-built plans, if available; (iv) all association insurance policies that are currently in force; (v) written
155 unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) contracts
156 in which the association is a contracting party, if any; (vii) a list of manufacturers of paints, roofing
157 materials, and other similar materials if specified for use on the condominium property; and (viii) an
158 inventory and description of stormwater facilities located on the common elements or which otherwise
159 serve the condominium and for which the unit owners' association has, or subsequently may have,

160 maintenance, repair, or replacement responsibility, together with the requirements for maintenance
161 thereof.

162 The requirement for delivery of stormwater facility information required by clause (viii) shall be
163 deemed satisfied by delivery to the association of a final site plan or final construction drawing showing
164 stormwater facilities as approved by a local government jurisdiction and applicable recorded easements,
165 or agreements if any, containing requirements for the maintenance, repair, or replacement of the
166 stormwater facilities.

167 If the unit owners' association is managed by a management company in which the declarant, or
168 its principals, have no pecuniary interest or management role, then such management company shall have
169 the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

170 I. This section shall be strictly construed to protect the rights of the unit owners.

171 **§ 55.1-2136. Termination of contracts and leases of declarant.**

172 If entered into before the executive board elected by the proprietary lessees pursuant to subsection
173 F of § 55.1-2134 takes office, (i) any management contract, employment contract, or lease of recreational
174 or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an
175 affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the
176 proprietary lessees at the time entered into under the circumstances then prevailing may be terminated
177 without penalty by the association at any time after the executive board elected by the proprietary lessees
178 pursuant to subsection F of § 55.1-2134 takes office after giving at least 90 days' notice to the other party.
179 However, a management contract that is not unconscionable between an association directly or indirectly
180 providing assisted living or nursing services to proprietary lessees and a declarant or an affiliate of a
181 declarant may not be terminated while a member of the executive board appointed by the declarant
182 continues to serve unless such termination is approved by a vote of a majority of the members of the
183 executive board and a majority vote of the proprietary lessees, other than the declarant. If the association
184 is managed by a common interest community manager subject to a contract that renews automatically,
185 such manager shall provide the association with notice of such at least 30 days but not more than 90 days

186 prior to the date by which the association is required to notify such manager of the association's intent to
187 terminate such contract. Such notice shall be made prior to every renewal period.

188 This section does not apply to any proprietary lease or any lease the termination of which would
189 terminate the cooperative or reduce its size, unless the real estate subject to that lease was included in the
190 cooperative for the purpose of avoiding the right of the association to terminate a lease under this section.
191 This section does not apply to any contract, incidental to the disposition of a cooperative interest, to
192 provide to a proprietary lessee for the duration of such proprietary lessee's life, or for any term in excess
193 of one year, nursing services, medical services, other health-related services, board and lodging, and care
194 as necessary, or any combination of such services. The rule of property law known as the rule restricting
195 unreasonable restraints on alienation shall not be applied to defeat any provision of the declaration,
196 bylaws, or proprietary leases requiring that the proprietary lessees be parties to such contracts.

197 **§ 55.1-2209. Time-share instrument for time-share estate project.**

198 In addition to the requirements of § 55.1-2208, the time-share instrument for a time-share estate
199 project shall outline or prescribe reasonable arrangements for the management and operation of the time-
200 share estate program and for the maintenance, repair, and furnishing of units it comprises, which shall
201 include provisions for the following:

202 1. Creation of an association, the members of which shall be the time-share estate owners. The
203 association may be formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.);
204 however, the association shall be formed prior to the time the project and program are registered with the
205 Board. Nothing shall affect the validity of the association, once formed, and the rights applicable to it as
206 granted by this chapter, notwithstanding the time when such association was formed;

207 2. Payment of costs and expenses of operating the time-share estate program and owning and
208 maintaining the units it comprises;

209 3. Employment and termination of employment of the managing agent for the project. Any
210 agreement pertaining to the employment of the managing agent and executed during the developer control
211 period shall be voidable by the association at any time after termination of the developer control period
212 for the time-share project, and any provision in such agreement to the contrary is hereby declared to be

213 void. However, if the management agreement is subject to a provision that allows such agreement to renew
214 automatically, the managing agent shall provide the association with notice of such renewal at least 30
215 days but not more than 90 days prior to the date by which the association is required to notify such manager
216 of the association's intent to terminate such contract. Such notice shall be made prior to every renewal
217 period;

218 4. Termination of leases and contracts for goods and services for the time-share estate project that
219 are entered into during the developer control period. Any such lease or contract shall become voidable at
220 the option of the association upon termination of the developer control period for the entire time-share
221 project, or sooner if the provisions of such lease or contract so state;

222 5. Preparation and dissemination to time-share estate owners of the annual report required by §
223 55.1-2213;

224 6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by
225 the time-share estate owners;

226 7. Collection of regular assessments, fees or dues, or special assessments from time-share estate
227 owners to defray all time-share expenses;

228 8. Comprehensive general liability insurance for death, bodily injury, and property damage arising
229 out of, or in connection with, the use and enjoyment of the project by time-share estate owners, their
230 guests, and other users. The costs associated with securing and maintaining such insurance shall be a time-
231 share expense. Nothing in this subdivision shall be construed to obligate the managing entity to secure
232 insurance on the conduct of the time-share estate owners, their guests, and other users or the personal
233 effects or property of such owners, guests, and users;

234 9. Methods for providing compensation or alternate use periods or monetary compensation to a
235 time-share estate owner if his contracted-for unit cannot be made available for the period to which the
236 owner is entitled by schedule or by confirmed reservation;

237 10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights
238 and privileges in the time-share estate program or time-share project for failure of such owner to comply
239 with provisions of the time-share instrument or the rules and regulations of the association with respect to

240 the use and enjoyment of the units and the time-share project. Under these procedures, a time-share estate
241 owner shall be given reasonable notice and reasonable opportunity to be heard and explain the charges
242 against him in person or in writing to the board of directors of the association before a decision to impose
243 discipline is rendered; and

244 11. Employment of attorneys, accountants, and other professional persons as necessary to assist in
245 the management of the time-share estate program and the units it comprises.

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